

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

VICTORIA NUNEZ,

Plaintiff,

vs.

CAROLYN W. COLVIN,  
 Acting Commissioner of Social Security,

Defendant.

Case No. 2:15-cv-01871-RFB-NJK

**ORDER**

On October 29, 2015, the Court granted Plaintiff's amended application to proceed *in forma pauperis* and screened Plaintiff's Complaint pursuant to 28 U.S.C. § 1915(e). Docket No. 4. The Court and, therefore, dismissed Plaintiff's Complaint with leave to amend. *Id.*

On October 30, 2015, Plaintiff filed an Amended Complaint. Docket No. 6. On November 5, 2015, the Court screened Plaintiff's Amended Complaint pursuant to 28 U.S.C. § 1915(e). The Court found that Plaintiff had corrected many of the deficiencies it noted in its screening of her Complaint. *See* Docket No. 6. Importantly, however, the Court found that Plaintiff had, once again, failed to show that her civil action is timely filed. *Id.*

The Complaint indicates that the Appeals Council denied the request for review on July 23, 2015. *See* Docket No. 5 at ¶ 8. This case was filed on September 29, 2015, more than 60 days after that denial. While the Complaint indicates that, on September 21, 2015, Plaintiff's counsel requested an extension of time in which to commence a civil action, it fails to attach the Appeals Council's order granting that extension and fails to state the date that the Appeals Council set as the extended deadline. Therefore, the

1 Court found that the Complaint has not sufficiently shown that the civil action is timely. Docket No. 6 at  
2 4. The Amended Complaint not only fails to correct the noted deficiency by attaching the Appeal Council's  
3 order, it actually omits the allegation that Plaintiff's counsel requested an extension of time in which to  
4 commence a civil action. *Id.* at 2. Therefore, the Court found that the Amended Complaint has not  
5 sufficiently shown that the instant action was timely commenced. Docket No. 7 at 2. The Court dismissed  
6 the Amended Complaint with leave to amend, if Plaintiff believed she could make the necessary showing  
7 that this action has been timely commenced. *Id.* The Court specifically stated that failure to do so by  
8 December 4, 2015, would result in a recommendation of dismissal of this action. *Id.*

9 On December 4, 2015, Plaintiff filed a Second Amended Complaint. Docket No. 8. Plaintiff again  
10 alleges that her counsel requested an extension of time in which to commence a civil action on September  
11 21, 2015. *Id.* at 2. Plaintiff further alleges that, on November 6, 2015, her counsel sent a follow-up letter  
12 to the Appeals Council, seeking status of her extension request. *Id.*

13 On December 7, 2015, the Court issued an order deferring screening of Plaintiff's Second Amended  
14 Complaint due to the fact that Plaintiff had failed to show that the instant matter was timely commenced.  
15 Docket No. 9. The Court allowed Plaintiff until January 8, 2016 to supplement her Second Amended  
16 Complaint with the necessary showing. *Id.* at 2. On January 7, 2016, Plaintiff filed a supplement to her  
17 Second Amended Complaint. Docket No. 10. The supplement attaches a notice from the Appeals Council,  
18 dated January 7, 2016, extending the time to file a civil action for 30 days from the date the letter was  
19 received. Docket No. 10-1 at 2. The Court is now satisfied that the instant action has been timely  
20 commenced, and has screened the Second Amended Complaint and Supplement, pursuant to 28 U.S.C.  
21 § 1915(e). The Court finds that the filings have sufficiently addressed the previously-identified deficiencies  
22 for purposes of screening the Second Amended Complaint.

23 Accordingly, the Court hereby **ORDERS** as follows:

- 24 1. The Clerk of the Court shall serve the Commissioner of the Social Security Administration  
25 by sending a copy of the summons, Second Amended Complaint, and Supplement by  
26 certified mail to: (1) Office of Regional Chief Counsel, Region IX, Social Security  
27 Administration, 160 Spear St., Suite 899, San Francisco, California 94105-1545; and (2) the  
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1 Attorney General of the United States, Department of Justice, 950 Pennsylvania Avenue,  
2 N.W., Room 4400, Washington, D.C. 20530.

3 2. The Clerk of Court shall issue summons to the United States Attorney for the District of  
4 Nevada and deliver the summons, Second Amended Complaint, and Supplement to the U.S.  
5 Marshal for service.

6 3. From this point forward, Plaintiff shall serve upon Defendant or, if appearance has been  
7 entered by counsel, upon the attorney, a copy of every pleading, motion or other document  
8 submitted for consideration by the court. Plaintiff shall include with the original paper  
9 submitted for filing a certificate stating the date that a true and correct copy of the document  
10 was personally served or sent by mail to the defendants or counsel for the defendants. The  
11 court may disregard any paper received by a district judge or magistrate judge which has not  
12 been filed with the Clerk, and any paper received by a district judge, magistrate judge or the  
13 Clerk which fails to include a certificate of service.

14 IT IS SO ORDERED.

15 Dated: January 8, 2016.

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19 NANCY J. KOPPE  
20 UNITED STATES MAGISTRATE JUDGE  
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